

## A MISSED OPPORTUNITY: HOW AUSTRALIA FAILED TO MAKE ITS MODERN SLAVERY ACT A GLOBAL EXAMPLE OF GOOD PRACTICE

### I INTRODUCTION

The internationalisation of supply chains is an inevitable part of modern production. Despite being the subject of extensive debate globally, including at the UN-level, accountability for exploitation in those supply chains remains a challenge.<sup>1</sup> Over the last few years, several countries have enacted legislation to regulate and hopefully eradicate associated exploitation, often referring to ‘modern slavery’. There is some degree of agreement that ‘modern slavery’ encompasses forms of forced labour, debt bondage and forced marriage,<sup>2</sup> but it is frequently — and often loosely — used to encompass broader forms of exploitation.

Among the legislative responses to ‘modern slavery’, the Act that probably received the most coverage was the (poorly named) *Modern Slavery Act 2015* (UK).<sup>3</sup> The law created an obligation on corporations with a turnover of more than

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<sup>1</sup> Richard Locke, Matthew Amengual and Akshay Mangla, ‘Virtue out of Necessity? Compliance, Commitment, and the Improvement of Labor Conditions in Global Supply Chains’ (2009) 37(3) *Politics & Society* 319; Richard Welford and Stephen Frost, ‘Corporate Social Responsibility in Asian Supply Chains’ (2006) 13(3) *Corporate Social Responsibility and Environmental Management* 166.

<sup>2</sup> International Labour Organisation and Walk Free Foundation, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (Report, 2017) <[https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms\\_575479.pdf](https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf)>.

<sup>3</sup> The problems with the language of ‘modern slavery’ have been widely acknowledged in academic and policy circles: see Professor Surya Deva, ‘Modern Slavery: Are the Current Regulatory Responses Modern and Gender Sensitive?’ (Conference Paper, Applying the Gender Lens to the UN Guiding Principles on Business and Human Rights: Australian Consultation, 14 November 2019); Ramona Vijeyarasa and Jose Miguel Bello y Villarino, ‘Modern-Day Slavery — A Judicial Catchall for Trafficking, Slavery and Labour Exploitation: A Critique of Tang and Rantsev’ (2013) 9(1) *Journal of International Law and International Relations* 38; Jean Allain, ‘Contemporary Slavery and Its Definition in Law’ in Annie Bunting and Joel Quirk (eds), *Contemporary Slavery: Popular Rhetoric and Political Practice* (UBC Press, 2017).

GBP36 million — around 13,000 corporations<sup>4</sup> — to report on the steps they have taken to identify instances of slavery and trafficking in their supply chain or in any part of their businesses, or to disclose a failure to undertake such due diligence.<sup>5</sup> Meanwhile, in 2016, the Netherlands introduced the *child labour due diligence law* which will take effect on 1 January 2020,<sup>6</sup> while the French adopted their ‘Duty of Vigilance Law’ in February 2017.<sup>7</sup> The French law has a wider scope but establishes concrete obligations to prevent exploitation within the supply chains of large multinational firms carrying out a significant part of their activity in France.<sup>8</sup> The European Union is governed by both the EU Non-Financial Reporting Directive,<sup>9</sup> which requires the management of around 8,000 large European companies to disclose their policies, risks and responses related to respect for human rights, as well as an EU Regulation laying down supply chain due diligence obligations in mining.<sup>10</sup>

At the end of last year, Australia introduced the *Modern Slavery Act 2018* (Cth), establishing reporting obligations for businesses with an annual turnover of \$100 million, affecting around 2,500 companies.<sup>11</sup> Businesses are required to report on the due diligence they have conducted with respect to potential risks of exploitation in their supply chains, including how they have assessed such risks and

<sup>4</sup> Human Rights Law Centre, Submission No 27 to Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into Establishing a Modern Slavery Act in Australia* (April 2017) 9.

<sup>5</sup> *Modern Slavery Act 2015* (UK) s 54.

<sup>6</sup> *Initiatiefvoorstel Wet zorgplicht kinderarbeid* [Child Labour Due Diligence Law] (Netherlands) 24 June 2016 [tr author].

<sup>7</sup> *Loi n° 2017-399 du 27 mars 2017* [Law No 2017-399 of 27 March 2017] (France) JO, 28 March 2017, text n° 1 of 99 (‘Law No 2017-399’).

<sup>8</sup> Stéphanie Poirot, ‘Devoir de Vigilance des Entreprises : Entre Hard et Soft Law, une Réponse au « Social Washing » ?’, *The Conversation* (online, 24 May 2018) <<http://theconversation.com/devoir-de-vigilance-des-entreprises-entre-hard-et-soft-law-une-reponse-au-social-washing-96451>>. The law came into effect in March 2017, but with the proposed civil penalties for violating corporations struck down following a decision of the Constitutional Council: see Conseil constitutionnel [French Constitutional Court], decision n° 2017-750 DC, 23 March 2017, reported in JO, 28 March 2017, text n° 2 of 99.

<sup>9</sup> *Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 Amending Directive 2013/34/EU as Regards Disclosure of Non-financial and Diversity Information by Certain Large Undertakings and Groups* [2014] OJ L 330/1.

<sup>10</sup> *Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 Laying Down Supply Chain Due Diligence Obligations for Union Importers of Tin, Tantalum and Tungsten, Their Ores, and Gold Originating from Conflict-affected and High-risk areas* [2017] OJ L 130/1.

<sup>11</sup> Advisory Committee of the Modern Slavery Registry, Submission No 9 to Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into Establishing a Modern Slavery Act in Australia* (2017) 2.

established ‘remediation processes’ as well as the effectiveness of their response.<sup>12</sup> This Commonwealth legislation followed the enactment a few months earlier of the *Modern Slavery Act 2018* (NSW), which contains a lower threshold requirement of \$50 million annual turnover and establishes oversight by the Anti-Slavery Commissioner of New South Wales.<sup>13</sup> Following this global trend, the New Zealand Human Rights Commission is raising awareness about the implications of new global regulations for New Zealand companies,<sup>14</sup> while Canada has considered enacting its own law.<sup>15</sup>

This article focuses on the Commonwealth law as one of the most recent but under-examined examples of regulation in this area. It particularly looks at the gap between the opinions expressed in submissions to the Parliament of Australia (‘Parliament’) during the drafting process and the final Commonwealth law. It shows a surprising disregard for the majority of submissions made to the Australian Joint Standing Committee on Foreign Affairs, Defence and Trade (‘Joint Standing Committee’). In this article, I argue that if the process had incorporated some of the most progressive of these recommendations, it could have delivered an all-encompassing response to supply chain exploitation, recognising the interlinkages between gendered rights violations, environmental concerns and human rights due diligence with a fundamental focus on worker’s rights. Hence, I describe the outcome — the *Modern Slavery Act 2018* (Cth) — as a missed opportunity.

In the next sections, I identify several concrete recommendations that were not incorporated into Australia’s *Modern Slavery Act 2018* (Cth). Yet, as a preliminary and overarching point, the inadequate comparative approach of drafters must be singled out. Despite the breadth of examples to draw from, the Parliament’s starting point was almost exclusively the United Kingdom’s law.<sup>16</sup> It ignored other earlier regulatory developments, particularly those cited above as well as even earlier ones from the

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<sup>12</sup> *Modern Slavery Act 2018* (Cth).

<sup>13</sup> *Modern Slavery Act 2018* (NSW).

<sup>14</sup> Rebekah Armstrong, ‘What the Australian Modern Slavery Act Will Mean for Big Kiwi Businesses’, *NZ Herald* (online, 12 December 2018) <[https://www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=12175694&fbclid=IwAR3TJCV1h6itfmBtJnj1KCtqqQCnKFR839l-mnwVRakC7ltiohMpuXk5Dps](https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=12175694&fbclid=IwAR3TJCV1h6itfmBtJnj1KCtqqQCnKFR839l-mnwVRakC7ltiohMpuXk5Dps)>.

<sup>15</sup> Standing Committee on Foreign Affairs and International Development, Parliament of Canada, *A Call to Action: Ending the Use of All Forms of Child Labour in Supply Chains* (Report No 19, 15 October 2018) <<https://www.ourcommons.ca/DocumentViewer/en/42-1/FAAE/report-19>>.

<sup>16</sup> The Terms of Reference of the Joint Standing Committee (2017) made explicit reference to the *Modern Slavery Act 2015* (UK) as the starting point for the Australian legislation as well as the Joint Standing Committee’s earlier report, *Trading Lives: Modern Day Human Trafficking* (Report, June 2013) <[https://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=jfadt/slavery\\_people\\_trafficking/report.htm](https://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jfadt/slavery_people_trafficking/report.htm)>: see ‘Terms of Reference’, *Parliament of Australia* (Web Page) <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/ModernSlavery/Terms\\_of\\_Reference](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Terms_of_Reference)>.

United States. For instance, in addition to the *California Transparency in Supply Chains Act of 2010*,<sup>17</sup> under President Obama, the United States introduced the ‘Dodd-Frank Act’ which included provisions related to conflict minerals from the Democratic Republic of Congo,<sup>18</sup> an Executive Order strengthening the prohibition on United States federal contractors from engaging in human trafficking activities,<sup>19</sup> and an Executive Order for reporting requirements on companies investing in Myanmar.<sup>20</sup> Although several submissions to the Joint Standing Committee described these other global examples in depth,<sup>21</sup> the drafters adopted the detrimental decision to ignore the lessons learnt from these earlier experiences and, hence, limited *ex ante*, the potential of the law, to be a progressive, all-encompassing global example.

## II AUSTRALIA’S MODERN SLAVERY ACT: A MISSED OPPORTUNITY BY PARLIAMENT

An essential starting point to enacting legislation in this area is for a country to understand how its corporate, labour and trade practices — both as companies and consumers — sustain exploitation in global or regional supply chains. Yet Australia evidently lacked this knowledge at the outset of the drafting process.<sup>22</sup>

The call for submissions by the Joint Standing Committee, alongside several other consultative processes,<sup>23</sup> was partially aimed at addressing this gap. The now dissolved Joint Standing Committee was tasked in February 2017 by Attorney-General George Brandis with inquiring into and reporting on ‘Establishing a

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<sup>17</sup> Cal Civil Code § 1714.43; Cal Revenue and Taxation Code § 19547.5.

<sup>18</sup> *Dodd-Frank Wall Street Reform and Consumer Protection Act 2010*, Pub L No 111–203, 124 Stat 1376–2223.

<sup>19</sup> *Strengthening Protections Against Trafficking in Persons in Federal Contracts*, 77 Fed Reg 60029 (2 October 2012).

<sup>20</sup> *Blocking Property of Persons Threatening the Peace, Security or Stability of Burma*, 77 Fed Reg 41243 (13 July 2012).

<sup>21</sup> Baker and McKenzie and Lambrook Hampton, Submission No 22 to Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into Establishing a Modern Slavery Act in Australia* (28 April 2017); Australian Institute of Employment Rights, Submission No 45 to Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into Establishing a Modern Slavery Act in Australia* (28 April 2017); Australian Council of Trade Unions, Submission No 113 to Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into Establishing a Modern Slavery Act in Australia* (4 May 2017); Human Rights Law Centre (n 4).

<sup>22</sup> Echo Project, Submission No 189 to Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into Establishing a Modern Slavery Act in Australia* (22 June 2017).

<sup>23</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade, ‘Public Hearings’ (Web Page, 2017) <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/ModernSlavery/Public\\_Hearings](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Public_Hearings)>.

Modern Slavery Act in Australia'.<sup>24</sup> Over a period of around six months, 10 public hearings were held and 225 submissions<sup>25</sup> were received from government agencies, businesses and their representative bodies, non-governmental organisations (faith-based, human-rights based and development-sector NGOs) as well as the academy and interested non-expert individuals.<sup>26</sup> Yet, this participatory approach was marred by the very limited incorporation of some of the most pertinent and progressive of the recommendations addressing gender, labour rights, trade and the environment made in several submissions.

A second and related starting point is the legal framework within which such laws would operate. Although a law requiring businesses to enhance their due diligence regarding exploitation within their supply chains was indeed missing, the Australian legal context prior to enactment of the Commonwealth law differed significantly from what existed in the United Kingdom before the enactment of its *Modern Slavery Act 2015* (UK). Australia already had a relatively robust set of laws in existence addressing trafficking, slavery-like practices such as servitude, forced labour, deceptive recruitment for labour or services, exploitation within intimate relationships and forced marriage, as well as laws related to vulnerable witness protection, confiscation of passports and proceeds of crime.<sup>27</sup> Yet, again, Parliament largely ignored submissions that laid out the differences between the legislative context of the United Kingdom and Australia, including a substantive submission by the Attorney-General's Department on this point.<sup>28</sup>

Had these differences been better acknowledged at the outset, the Joint Standing Committee could have narrowed its terms of reference and submissions could have engaged more deeply on the specific issue of supply chain regulation. In turn, the final law may not have defined 'modern slavery' to include a series of already

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<sup>24</sup> This particular Joint Committee was dissolved by the House of Representatives on 11 April 2019.

<sup>25</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade, 'Submissions' (Web Page, 2017) <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/ModernSlavery/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Submissions)>.

<sup>26</sup> For more details on the breakdown of submissions by organisation-type, see Ramona Vijayarasa, 'Women, Work and Global Supply Chains: The Gender-Blind Nature of Australia's Modern Slavery Regulatory Regime' (2020) 26(1) *Australian Journal for Human Rights* (forthcoming).

<sup>27</sup> *Criminal Code (Slavery and Slavery-like Offences) Act 1995* (Cth); *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* (Cth); *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005* (Cth); *Foreign Passports (Law Enforcement and Security) Act 2005* (Cth); *Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013* (Cth); *Proceeds of Crime Act 2002* (Cth); *Fair Work Act 2009* (Cth); *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* (Cth).

<sup>28</sup> Attorney-General's Department (Criminal Justice Policy and Programmes Division), Submission No 89 to Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into Establishing a Modern Slavery Act in Australia* (April 2017).

regulated crimes (such as sexual servitude) that often have little to do with supply chain exploitation by medium and large-sized corporations.<sup>29</sup> This is a problem in the *Modern Slavery Act 2018* (NSW) too. Its Schedule of Offences, for example, lists crimes that are largely unrelated to supply chain exploitation by medium and large-scale corporations (such as the production of child abuse materials).<sup>30</sup>

A further pertinent issue for the parliamentary debates was whether a turnover threshold should apply and if so, what amount. The final threshold in the *Modern Slavery Act 2015* (UK) was lower than what was debated.<sup>31</sup> While ideally from a human rights perspective all businesses would be obliged to report, with one submission calling for no minimum threshold at all,<sup>32</sup> from an economic perspective, this could place an unreasonable burden on small to medium-sized businesses.

The *Modern Slavery Act 2018* (Cth) set out a threshold of AUD100 million in annual turnover (roughly USD70 million). Yet, in Australia, a small business is defined by the Australian Tax Office as having an annual turnover of less than AUD10 million. A wide range of medium-to-big-sized businesses fall outside the scope of the law. Alternatively, Parliament could have considered a risk-based approach for companies within a lower turnover bracket, forcing them to assess their exposure to exploitative supply chains, and therefore potentially widening the reach of the law where relevant.

Parliament followed some of the more obvious recommendations related to reporting requirements, including for single entities<sup>33</sup> and for joint reports, such as by a parent company and its subsidiaries.<sup>34</sup> The *Modern Slavery Act 2018* (Cth) also places reporting obligations on public authorities who need to demonstrate the due diligence undertaken in the procurement of goods, services and construction, an improvement on the United Kingdom's model recommended in a number of submissions.<sup>35</sup> It also establishes a central repository for the modern slavery statements prepared by companies.<sup>36</sup> Following suggestions in several submissions,<sup>37</sup> the *Modern Slavery*

<sup>29</sup> *Modern Slavery Act 2018* (Cth) s 4.

<sup>30</sup> *Modern Slavery Act 2018* (NSW) sch 2.

<sup>31</sup> Advisory Committee of the Modern Slavery Registry (n 11).

<sup>32</sup> See Fairtrade Australia & New Zealand, Submission No 49 to Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into Establishing a Modern Slavery Act in Australia* (April 2017).

<sup>33</sup> *Modern Slavery Act 2018* (Cth) s 13.

<sup>34</sup> *Ibid* ss 14–16.

<sup>35</sup> *Ibid* s 5(1)(b)–(c); British Institute of International and Comparative Law, Submission No 108 to Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into Establishing a Modern Slavery Act in Australia* (2017).

<sup>36</sup> *Modern Slavery Act 2018* (Cth) ss 18–20.

<sup>37</sup> Advisory Committee of the Modern Slavery Registry (n 11); Anti-Slavery International, Submission No 186 to Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into Establishing a Modern Slavery Act in Australia* (June 2017); Australian Council of Trade Unions (n 21); Australian Institute of Employment Rights (n 21).



*Act 2018* (Cth) also establishes extra-territorial reach.<sup>38</sup> Australian companies operating abroad must disclose the risks in their supply chains domestically and overseas.

However, contrary to clear demands from civil society<sup>39</sup> and even business,<sup>40</sup> there are very limited consequences if corporations fail to report properly. The architecture of the law has shifted the burden of determining if a human rights violation has taken place from government to businesses. For this to work, it must be accompanied by strong incentives to ensure such due diligence is adequate and that businesses respond to the outcomes of investigations. Yet, the Australian sanctions are weak at best, arguably also one of the weakest elements of the United Kingdom's law too.<sup>41</sup>

Two types of sanctions are relevant in this context. The first relates to the basic issue of reporting. Submissions recommended robust monitoring and enforcement mechanisms, with sanctions imposed for: failure to produce a modern slavery statement; failure to meet minimum reporting requirements, including mandatory information; and failure to outline steps to address modern slavery risks.<sup>42</sup> The second issue is sanctions in response to identified cases of exploitation. Given that victims of corporate abuses often struggle to access justice,<sup>43</sup> a victim compensation scheme is an obvious solution that was also recommended but ignored.<sup>44</sup> Moreover, contrary to extensive recommendations by both civil society and business,<sup>45</sup> the

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<sup>38</sup> *Modern Slavery Act 2018* (Cth) ss 9–10.

<sup>39</sup> Australian Institute of Employment Rights (n 21); Amnesty International Australia, Submission No 154 to Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia *Inquiry into Establishing a Modern Slavery Act in Australia* (19 May 2017); Advisory Committee of the Modern Slavery Registry (n 11); Anti-Slavery Australia, Submission No 156 to Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into Establishing a Modern Slavery Act in Australia* (2017).

<sup>40</sup> Australian Council of Superannuation Investors, Submission No 107 to Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into Establishing a Modern Slavery Act in Australia* (2 May 2017).

<sup>41</sup> Genevieve LeBaron and Andreas Rühmkorf, 'The Domestic Politics of Corporate Accountability Legislation: Struggles over the 2015 UK Modern Slavery Act' [2017] *Socio-Economic Review* 1, 26–27; Frank Field, Maria Miller and Baroness Elizabeth Butler-Sloss, *Second Interim Report: Transparency in Supply Chains — Independent Review of the Modern Slavery Act 2015* (Report, 22 January 2019) 13.

<sup>42</sup> Advisory Committee of the Modern Slavery Registry (n 11).

<sup>43</sup> *Ibid.*

<sup>44</sup> Focus on Labour Exploitation (FLEX), Submission No 163 to Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into Establishing a Modern Slavery Act in Australia* (18 May 2017).

<sup>45</sup> ANZ Banking Group, Submission No 30 to Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into Establishing a Modern Slavery Act in Australia* (27 April 2017); Australian Council of Superannuation Investors (n 40); Australian Council of Trade Unions (n 21); Australian Lawyers

government is not required to publish a list of entities required to report, significantly undermining the work of civil society in holding businesses to account for such rights violations.

The above concerns are bare minimums for a piece of legislation on due diligence reporting that are missing in the law. However, several other submissions contained recommendations that could have resulted in a global good practice model. A significant and surprising number of submissions — from civil society through to business and their representative bodies — recommended some type of oversight mechanism, whether this be in the form of an Anti-Slavery Commissioner<sup>46</sup> or a modern slavery ombudsman, with specific references to the goal of better protecting the rights of those who may otherwise be exploited. The International Women’s Development Agency took this one step further, arguing for such an oversight role to focus on women and children as well as exploitation or discrimination on the basis of one’s sexual orientation or gender identity.<sup>47</sup> No such federal oversight mechanism was established and instead, responsibility for overseeing implementation and monitoring under the *Modern Slavery Act 2018* (Cth) presently sits with the Minister for Home Affairs.

One submission identified the importance of raising awareness among Australian backpackers working in the horticulture industry about the high incidence of sexual harassment in this space,<sup>48</sup> a submission that is well supported by the recently enacted International Labour Organisation’s *Convention Concerning the Elimination of Violence and Harassment in the World of Work*.<sup>49</sup> Recommendations also spoke to the relevance of trade to this debate and the potential for the law to exclude from Australian markets goods tainted with child labour and forced labour.<sup>50</sup> Such recommendations identified the ingredients for a human-rights based, gender-responsive

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for Human Rights, Submission No 67 to Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into Establishing a Modern Slavery Act in Australia* (27 April 2017).

<sup>46</sup> See eg Amnesty International Australia, Submission No 154 to Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into Establishing a Modern Slavery Act in Australia* (19 May 2017); Fairtrade Australia & New Zealand (n 32); Anti-Slavery Australia (n 39).

<sup>47</sup> International Women’s Development Agency, Submission No 34 to Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into Establishing a Modern Slavery Act in Australia* (27 April 2017).

<sup>48</sup> Tom and Mia’s Legacy Foundation, Submission No 182 to Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into Establishing a Modern Slavery Act in Australia* (23 May 2017).

<sup>49</sup> International Labour Organisation, ‘New International Labour Standard to Combat Violence, Harassment, at Work Agreed’ (Media Release, 21 June 2019) <[https://www.ilo.org/ilc/ILCSessions/108/media-centre/news/WCMS\\_711321/lang--en/index.htm](https://www.ilo.org/ilc/ILCSessions/108/media-centre/news/WCMS_711321/lang--en/index.htm)>; *Convention Concerning the Elimination of Violence and Harassment in the World of Work*, opened for ratification 21 June 2019 <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:3999810:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:3999810:NO)>.

<sup>50</sup> Human Rights Law Centre (n 4); Anti-Slavery International (n 37).



and worker-centred law. The failure to take them on board was a loss both for Australia's global standing, and more importantly, for those victims affected by supply chain exploitation.

### III LESSONS FOR OTHER JURISDICTIONS

Several lessons come to mind for jurisdictions considering the enactment of regulations to address supply chain exploitation. First, any law introduced must respond to the pre-existing regulatory environment and the nature in which domestic companies engage in contemporary forms of labour exploitation at home or abroad. Supply-chain legislation must be adapted to local needs rather than simply transposing regulatory measures from abroad.

Second, beyond raising the consciousness of consumers and businesses regarding their roles in sustaining exploitation, regulations require accountability, transparency and sanctions if the global regulatory momentum gathered to date is to be utilised to reduce — ideally to eradicate — global supply chain exploitation. France, the Netherlands, the United States, and the European Union's conflict minerals regulations specify that organisations must not only conduct due diligence of their supply chains, but must also act.

Third, laws should explicitly call for the adoption of gender-sensitive due diligence processes and the collection of gender-disaggregated data.<sup>51</sup> A good practice law would address environmental damage alongside human rights violations, as the French law does.<sup>52</sup>

Fourth, trade regulations should be considered. Ideally, regulations would prohibit the import of any goods that were produced or manufactured, in whole or in part, using forced labour, slave labour, child labour or the labour of persons who have been trafficked.

Finally, public procurement is an essential part of this issue, including in the defence sector. Drawing from the words of Barack Obama, 'as the largest single purchaser of goods and services in the world, the United States Government bears a responsibility to ensure that taxpayer dollars do not contribute to trafficking in persons'.<sup>53</sup>

Government contracts must be the subject of due diligence as well.

It is a positive development that countries like Canada are considering to follow the global trend. Learning from the United Kingdom and Australia's mistakes, there is scope for other countries to make better use of the opportunity. Some businesses,

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<sup>51</sup> Vijayarasa (n 26); Surya Deva, 'Slavery and Gender-Blind Regulatory Responses', *Cambridge Core Blog* (Blog Post, 8 March 2019) <<http://blog.journals.cambridge.org/2019/03/08/slavery-and-gender-blind-regulatory-responses/>>.

<sup>52</sup> Law No 2017-399 (n 7) art 1.

<sup>53</sup> *Strengthening Protections Against Trafficking in Persons in Federal Contracts*, 77 Fed Reg 60029 (2 October 2012).

government entities and even civil society may argue that a gender-responsive, environmentally conscious effort to eradicate labour exploitation in global supply chains is overly robust and unrealistic. Yet, even if we return to the bare minimum requirements, accountability is key. Parliament decided to ignore the submissions advocating for stronger accountability mechanisms and missed the opportunity to become a global good practice model.